PT 00-29
Tax Type: Property Tax
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

EPISCOPAL CHURCH OF ST. JAMES THE LESS, APPLICANT	**Nos. 99-PT-0044 (98-16-0593) 00-PT-0041 (99-16-0004)**
v.	**Real Estate Tax Exemptions for 1998 and 1999 Assessment Years**
	P.I.N: 04-23-200-029
	Cook County Parcel
ILLINOIS DEPARTMENT OF REVENUE	**Alan I. Marcus Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. D. Cameron Findlay of Sidley and Austin on behalf of the Episcopal Church of St. James the Less (hereinafter the "applicant").

SYNOPSIS: These consolidated proceedings raise the issue of whether any part of real state identified by Cook County Parcel Index Number 10-13-322-011 (hereinafter the "subject property") was "used exclusively for religious purposes," as required by Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq* (hereinafter the "Code"), during the 1998 and 1999 assessment years.

The controversy arises as follows:

Applicant filed two separate Real Estate Tax Exemption Complaints with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). The first complaint,

filed January 14, 1999, sought to exempt the subject property from 1998 real estate taxes under Section 15-40 of the Code. (Dept Ex. No. 1). The second complaint, filed November 9, 1999, sought to exempt said property from 1999 real estate taxes under the same provision. (*Id*.)

The Board reviewed applicant's complaints and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that partial exemptions be granted for both of the tax years in question. The Department rejected these recommendations by issuing two separate determinations finding that the subject property was not in exempt use. The first determination, issued August 19, 1999, pertained to the 1998 assessment year; the second, issued March 9, 2000, affected the 1999 tax year. (Dept. Ex. No. 4).

Applicant filed timely appeals as to both denials and subsequently presented evidence at separate evidentiary hearings.[1] After carefully reviewing the records compiled at those hearings, which are consolidated for purposes of decision herein,[2] I first recommend that the Department's determination as to the 1998 assessment year be affirmed in its entirety, and furthermore, recommend that the Department's determination as to the 1999 assessment year be modified in accordance with the following analysis:

FINDINGS OF FACT:

1. The Department's jurisdiction over these matters and its positions herein, namely that the entire subject property was not in exempt use throughout the 1998 and 1999 assessment years, are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 4.

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1. The first hearing was held on March 13, 2000; the second on August 11, 2000. Thus, any references herein to the transcript of the March 13, 2000 hearing shall be to "Tr. of 3/13/00, p. __[;]" any references to the August 11, 2000 transcript shall be to Tr. of 8/11/00, p. __[.]"

2. Applicant is a parish within the Chicago Diocese of the Protestant Episcopal Church in the United States. Its basic organizational purposes are, per its constitution, to operate a place of worship always located in Northfield, Illinois that operates in accordance with the constitution, cannons, discipline and worship practices of the Protestant Episcopal Church in the United States. Applicant Ex. No. 2; Tr. of 8/11/00, p. 8.

3. The subject property is located at 500 Sunset Ridge Road, Northfield, IL 60093 and consists of a 2.62 acre lot (hereinafter the "lot") that is improved with a 600-square foot residential facility located on the northwest corner of the parcel. (hereinafter the "residence"). Dept. Ex. No. 2; Applicant Ex. Nos. 5-A, 5-B; Tr. of 3/11/00, pp. 18-22; Tr. of 8/11/00, p. 9.

4. All other areas of the lot excluding the residence are unimproved. *Id*.

5. The subject property is located in direct proximity to applicant's church and rectory, as described in the following diagram:

Parcel 04-23-200-010 Applicant's Rectory	Parcel 04-23-200-011 Applicant's Church
Adjacent Parcel Not At Issue Herein	Subject Property

Dept. Ex. No. 3; Tr. of 8/11/00, pp. 9-10.

6. Applicant's church and rectory have been exempt from exempt from real estate taxes under terms of the Department's determination in Docket No. 91-16-652, issued by the Property Tax Administration Bureau (now the Office of Local Government Services) on May 14, 1992. Administrative Notice.

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2. Applicant filed a timely motion to consolidate the two cases for purposes of decision prior to the second hearing. That motion was granted in an on-the-record ruling found at Tr. of 8/11/00, p.

7. These property tax exemptions remained in full force and effect throughout both of the tax years currently in question. *Id*.

8. Applicant obtained ownership of the subject property by means of a warranty deed dated July 1, 1998. Applicant Ex. No. 2.

9. Applicant acquired ownership of the subject property with the intention of using the residence as a parsonage for its youth rector and the ground that is immediately adjacent to its church as a supplementary parking area. Applicant Ex. No. 5A; Tr. of 3/13/00, pp. 23-25, 28-31; Tr. of 8/11/00, p. 11.

10. The residence was subject to a pre-existing residential leasehold, in which applicant inherited the landlord's interest, as of the date of purchase. Applicant did not terminate this leasehold until it expired on April 30, 1999. Applicant Group Ex. No. 6; Tr. of 3/13/00, pp. 12-17.

11. Applicant demised 120 square feet of storage space in the residence to the previous owner of the subject property via a separate lease dated July 1, 1998. This lease remained in full force until and effect until its scheduled termination date, April 30, 1999. *Id*.

12. Applicant took steps to prepare the subject property for the youth rector's occupancy, including *inter alia*, painting, redecorating and electrical work, immediately after the tenants vacated their respective leaseholds. It continued making necessary preparations until August of 1999. Applicant Ex. No. 2; Tr. of 8/11/00, p. 25.

13. The renovated residence contained a youth group meeting area, a youth group office, a storage area and residential facilities for the youth rector and his family. Applicant Ex. No. 2.

3.

14. Applicant's Youth Rector, Jay Ainger, moved into the residence on August 1, 1999. He did not pay rent to applicant but was required to live in the residence as a condition of his employment. Tr. of 8/11/00, pp. 20, 26, 29-30.
15. Rector Ainger had his office in the residence, and held various youth group meetings and other church-related youth activities thereat, after he moved in. Applicant Ex. No. 2; Tr. of 8/11/00, pp. 20-21, 27-28.
16. Applicant did not actually use any part of the lot for church-related parking during 1998 because it had not raised the funds to make necessary safety improvements. It did, however, continuously mow the lawn, construct a path to the residence and hold various planning meetings on the lot throughout the latter part of 1998 and the early part of 1999. Tr. of 3/13/00, pp. 30-33, 38, 40-41; Tr. of 8/11/00, pp. 13, 18-19.
17. Applicant did however, hold various church-related youth activities on the lot, including church youth group meetings, pizza parties, games and other church youth group events, on the lot after Rector Ainger moved into the residence. Tr. of 8/11/00, pp. 28-29.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant: (1) has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting any part of the subject property from 1998 real estate taxes under 35 **ILCS** 200/40; (2) has demonstrated through legally appropriate means, that the following schedule of exemptions should apply for the 1999 assessment year:

Area	**Exempt As Of**	**% of Tax Year**
600 sq. ft. improvement & all of its underlying ground	5/1/99	67%

Remainder of subject property (unimproved portion of lot)	8/1/99	42%

Accordingly, under the reasoning given below, the Department's determination with respect to the 1998 assessment year should be affirmed in its entirety. However, the Department's determination as to the 1999 assessment year should be modified in accordance with the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-1 *et seq.* (hereinafter the "Code"). The Code provisions that govern disposition of this case are found in 35 **ILCS** 200/15-40, which provides, in relevant part, for exemption of the following:

> All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and use in conjunction therewith as housing facilities provided for ministers … performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations… [.]
>
> A parsonage … or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 **ILCS** 200/15-40.

The word exclusively, when used in Section 15-40 and other exemption statues, means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, as applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People *ex rel.* Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The applicable statute herein mandates that applicant demonstrate that it actually put the subject property to, or was actively developing said property for, some specifically identifiable exempt use during the period in question. *See,* 35 **ILCS** 200/15-40; Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt). In this case, the following considerations lead me to conclude that applicant either: (1) did not actually use the subject property for exempt purposes; or, (2) failed to

prove that any part thereof was so used, throughout the period that began July 1, 1998 and ended April 30, 1999.

First, applicant leased the residence to non-exempt private parties from July 1, 1998 through April 30, 1999. *See*, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (if real estate is leased for rent, whether in cash or other form of consideration, it is used for the non-exempt, profit-oriented purpose of producing income for its owner). Second, applicant did not have sufficient funds to make whatever safety improvements were necessary to convert the unimproved portion of the subject property into a supplemental parking area.[3] *See*, Tr. of 3/13/00, pp. 30-32, 38.

Business reality dictates that applicant could not have begun to make these improvements without the requisite funding. More importantly, applicant's treasurer,

3. Parking areas are subject to exemption under Section 200/15-125 of the Code if they are: (1) owned by a school district, non-profit hospital, or religious or charitable institutions which meet the qualifications for exemption set forth in the applicable section(s) of the Code; (2) used as part of a use for which an exemption is provided in the Code and (3) not be leased or otherwise used with a view to profit. 35 **ILCS** 200/15-125; Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1st Dist. 1986).

John Beatty, consistently testified that applicant's use of the unimproved portion "was limited to committees going there standing onto the property and figuring out where an expansion of our parking lot will be." Tr. of 3/13/00, p. 22. *See also*, Tr. of 3/13/00, pp. 33, 39-41.

These meetings may have enabled applicant to plan for a future exempt use. Nevertheless, applicant's potential for actually achieving such use must be considered speculative in the absence of appropriate funding. This type of speculation was not present in Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), wherein the court held in favor of exempting part of a medical facility that was actually under construction, through the erection of berms, during the tax year in question. *Id*., at 585-586.

This case is also distinguishable from Weslin Properties in that here, the most applicant has proven is that it manifested an intent to use the unimproved portion of the lot for exempt purposes throughout the latter part of 1998 and the early part of 1999.[4] Tr. of 3/13/00, pp. 30-33, 38, 40-41; Tr. of 8/11/00, pp. 13, 18-19. It is well settled that actual, rather than intended, use is the determinative test for exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and

4. It is briefly noted that applicant's treasurer, John Beatty, Jr, testified that applicant continuously mowed the lawn throughout this period, staked out a tentative parking area at some unspecified point in 1998 and constructed a wood-chip pathway to the residence at some point in 1999. Tr. of 3/13/00, pp. 33, 39. However, the residence itself was not in exempt use until the leaseholds thereon expired on April 30, 1999. People ex. rel. Baldwin v. Jessamine Withers Home, *supra*. Therefore, the pathway which provided access thereto was not in exempt use before that date. Furthermore, applicant's mere mowing of the lawn and staking out a tentative area for the proposed parking area does not erase the doubts created by its lack of funds. Such doubts must be resolved in favor of taxation. People *ex rel.* Nordland v. Home for the Aged, 40 Ill.2d 91 (1968). Consequently, I conclude these portions of Mr. Beatty's testimony do not disturb my overall conclusion of intended use.

Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Consequently, any uses of the unimproved lot through which applicant manifested that intent are legally insufficient to satisfy the statutory exempt use requirement.

Based on the foregoing, I conclude that the entire subject property, inclusive of the residence and unimproved portion of the lot, were not in exempt use, as required by Section 15-40, between July 1, 1998 and April 30, 1999. Therefore, the Department's first determination, which denied said property exemption from 1998 real estate taxes, should be affirmed in its entirety. Furthermore, that portion of the Department's second determination, which denied the subject property exemption from real estate taxes for the period January 1, 1999 through April 30, 1999, should likewise be affirmed.

Applicant seeks to alter this conclusion by suggesting that I grant 50% exemption for the period between July 1, 1998 and April 30, 1999. Applicant Ex. No. 7; Tr. of 3/13/00, pp. 34-36. Applicant arrives at this percentage via a series of computations demonstrating that it applied approximately half of the rental income it received from the residential and storage-space leaseholds toward payment of its property taxes. *Id*.

Illinois law does recognize that partial exemptions can be granted where applicant proves that a specifically identifiable portion of real estate is actually used for an exempt purpose. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). However, the facts of this case, as they pertain to the period between July 1, 1998 and April 30, 1999, fail to disclose that any specifically identifiable portion of the subject property was actually in exempt use during that time.

More importantly, applicant's formula fails to recognize that a property tax exemption is equivalent to an assessment of zero, at least for purposes of ascertaining the

value of real estate for property tax purposes. Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991). That being the case, it is not feasible to grant an apportionment of the type proposed by applicant because while one can divide real estate according to exempt and non-exempt uses (Illinois Institute of Technology v. Skinner, *supra*), one cannot do the same for any *ad valorum* taxes levied against that real estate, all of which must be based on valuation assessments that exceed zero. I therefore reject applicant's proposed pro-ration on grounds that it is contrary to law.

A different type of pro-ration can, however, be applied to applicant's post-leasing uses of the subject property. Section 200/9-185 of the Code provides, in relevant part, that:

> … when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 **ILCS** 200/9-185.

For technical purposes, applicant obtained its "right of possession" when it purchased the subject property on July 1, 1998. However, the preceding analysis demonstrates that no part of the subject property was in exempt use prior to the date on which the residential and storage-space leases expired, April 30, 1999.

Applicant began renovating the residence for use as a parsonage for its youth minister immediately after the leaseholds expired. Renovations of this type fall within the holding in Weslin Properties v. Department of Revenue, *supra*, because they caused the residence to be prepared for a specifically identifiable exempt use which applicant in

turn effectuated on a date certain. Such certainty stands in stark contrast to the speculation associated with applicant's plan to use the unimproved portion of the lot as a supplemental parking area. Therefore, only the former rises to the level of clear and convincing evidence necessary to establish exempt use. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Furthermore, the specifically identifiable exempt use is, in this case, that of a parsonage. The provisions governing the exemption of such facilities require, in substance, that the property be: (1) owned by a duly qualified religious institution; and, (2) used as a housing facility for clergy employed by that religious institution; and, (3) occupied by clergy who must reside in the facility as a condition of employment. 35 **ILCS** 200/15-40; McKenzie v. Johnson, 98 Ill.2d 87 (1983).

The Department has previously determined applicant's church and rectory are exempt from real estate taxation. Hence, applicant is the type of religious institution whose parsonages and other property are subject to exemption under Section 15-40 if used for appropriate purposes. Moreover, the warranty deed (Applicant Ex. No. 1-A) proves that applicant owned the residence during the relevant period. Finally, the testimony of applicant's treasurer, John Beatty, Jr., establishes that the residence was used for the very narrow set of residential purposes set forth in Section 15-40. *See*, Tr. of 8/11/00, pp. 20, 26, 29-30.

Based on the above, I conclude that the residence qualifies as a tax-exempt "parsonage" for part of the 1999 assessment year. That part is, per the above analysis, the one which occurred subsequent to the date on which the residence ceased to be leased to third parties, April 30, 1999. Therefore, the 600 square feet of the subject property

whereon the residence is situated, and all of the ground underlying said residence, should be exempt from real estate taxes, but only for that 67% of the 1999 assessment year which occurred between May 1, 1999 and December 31, 1999.

With regard to the remainder of the subject property, (to wit, the unimproved portion of the lot located thereon), it is briefly noted that Mr. Beatty testified that applicant used a portion thereof as overflow parking for its church. Tr. of 8/11/00, p. 31. However, he did not identify, with any discernable amount of precision, what specific part of the lot applicant used for that purpose. Absent that identification, I am unable to grant a partial exempt for any parking related uses. Illinois Institute of Technology v. Skinner, *supra*.

I am nevertheless able to grant an exemption for other uses of the lot. Mr. Beatty's testimony proves that applicant's youth rector held youth group meetings and other related events on the unimproved portion of the lot after he moved into his parsonage on August 1, 1999. Tr. of 8/11/00, pp. 28-29. Such activities doubtlessly facilitated applicant's exempt use of the church itself. Consequently, any uses of the lot associated therewith would qualify as exempt on grounds they were "reasonably necessary" to promote same. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4th Dist. 1992). Therefore, I recommend that the unimproved portion of the lot be exempt for that 42% of the 1999 assessment year that took place between August 1, 1999 and December 31, 1999.

In summary, the residence was not in exempt use from the date applicant purchased the subject property, July 1, 1998, through the date said residence ceased to be

leased to third parties, April 30, 1999. Furthermore, applicant failed to prove that the unimproved portion of the lot was actually used for a specifically identifiable exempt use prior to August 1, 1999, which was the date applicant's youth rector moved into the residence that applicant renovated to be his parsonage. Therefore, the Department's determination as to the 1998 assessment year should be affirmed in its entirety. However, the Department's determination as to the 1999 assessment year should be modified to reflect the following schedule of exemptions:

Area	**Exempt As Of**	**% of Tax Year**
600 sq. ft. improvement & all of its underlying ground	5/1/99	67%
Remainder of subject property (unimproved portion of lot)	8/1/99	42%

WHEREFORE, for all the above-stated reasons, it is my recommendation that:

A. 100% of real estate identified by Cook County Parcel Index Number 04-23-200-029 not be exempt from real estate taxes for 100% of the 1998 assessment year under Section 15-40 of the Property Tax Code;

B. 100% of said real estate not be exempt from real estate taxes under Section 15-40 of the Code for that 33% of the 1999 assessment year which occurred between January 1, 1999 and April 30, 1999;

C. The 600 square foot residential improvement located on said real estate, and all of its underlying ground, be exempt from real estate taxes under Section 15-40 of the Code, but only for that 67% of the 1999 assessment year that began on May 1, 1999 and ended on December 31, 1999; and finally,

D. The remainder of said property, to wit, the unimproved portion of the lot located thereon, be exempt from real estate taxes under Section 15-40 of the Code, but only for that 42% of the 1999 assessment year that began on August 1, 1999 and ended on December 31, 1999.

October 26, 2000
Date

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Alan I. Marcus
Administrative Law Judge